IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 779 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

TRIVEDI AMIRAM VIRESHWAR

Appearance:

MR KC SHAH, APP for Appellant

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 14/02/2001

ORAL JUDGEMENT

1. This is an appeal preferred by the State of Gujarat under sec.378(1)(3) of the CrPC against the order of acquittal passed by the ld. Judicial Magistrate, First Class, Unjha, District: Mehsana on 25.5.2000 in Criminal Case No. 589/90.

2. According to the prosecution, on 24.10.1986, at about 7.00 A.M., near the backside gate of Unjha College, there was a hot exchange of words between the injured complainant and the respondent accused and at that time, respondent accused had abused the complainant and gave a blow of "Kadchho" (an iron utensil used in the process of cooking) on the face of the complainant and the complainant sustained injury on his left jaw. After investigation, police chargesheeted the respondent accused for the offence punishable under sections 324, 504 of IPC and sec.135 of Bombay Police Act.

3. I have gone through the judgment of the ld. Magistrate. Ld. APP Mr. K.C.Shah has taken me through entire set of evidence available on record for the purpose of dealing with this appeal at the admission stage. Copies of the depositions and relevant panchanamas are given to the Court and I have considered the same. After going through the reasons recorded by the ld. Magistrate for acquittal, I am satisfied that the findings of the ld. Magistrate are absolutely legal and there is no perversity in the findings. No material error is reflected on the face of the record. Ld. Magistrate has properly appreciated the evidence in light of broad principles of criminal jurisprudence and, therefore, without assigning reasons afresh, I am inclined to dismiss this appeal in limine as I am in full agreement with the view taken and reasons assigned by the ld. Magistrate while recording acquittal.

4. Separate reasons for confirming the order of acquittal are not required to be recorded formally. However, I would like to point out some important and relevant features emerging from the record and judgment of the ld. Magistrate. They are as under:-

(i) Undisputedly, complaint was lodged after a period of 24 hours i.e. on the next day of incident and no reasonable and convincing explanation has been given by the prosecution for the delayed FIR;

(ii) Though this is a case of simple injury, police has unnecessarily registered the offence punishable under sec. 324 of the IPC because on the date of charagesheet, there was no evidence with the investigating agency to the effect that complainant had sustained any grievous hurt like fracture;

(iii) There are material contradictions in the evidence of the complainant and the eye-witnesses examined vide exh.49 & 50;

(iv) The prosecution has failed in examining two independent witnesses namely college boys who assisted the injured complainant immediately after the incident;

(v) There is no formal production of notification published under sec. 37(1) of Bombay Police Act nor any evidence is adduced as to publication of such notification;

(vi) Evidence of Dr. Laxman M.Patel (exh.45) probablise the defence theory that the complainant might have sustained injury on account of fall from the bicycle. During cross-examination, Dr. Patel has admitted that there may not be any actual pain in absence of any injury, but there can be complaint of a pain which might be illusory;

(vii) Injury certificate exh.46 reveals about the simple injury which can be inflicted by any hard and blunt substance. Complainant has not stated specifically in the complaint or in his deposition that which portion of "Kadchho" was used by the accused for causing injury to him. The conduct of complainant and two eye-witnesses is apparently unnatural and it would not be safe to hold that they have collectively proved the crime beyond reasonable doubt;

(viii) Though the complainant was referred to Mehsana Hospital for further examination, the prosecution has failed to examined any doctor from Mehsana hospital and there is no medical evidence on record to show that the complainant had sustained injury of fracture. In absence of positive medical evidence, accused cannot be linked with the crime of causing serious injury like fracture as pleaded by the prosecution.

(ix) Exaggeration made by the prosecution witnesses including the complainant makes the credibility of these witnesses doubtful;

(x) There was ample scope for the complainant to plant eye-witnesses examined vide exh.49 & 50 being caste-fellow and otherwise not related to the accused.

5. It is settled legal position that merely because the ld. Magistrate could have recorded a different finding than the one which is recorded by him or that it would be possible for this Court to record a different finding than the one which is recorded by the ld. Magistrate on the same set of facts, would not confer jurisdiction to interfere with the order of acquittal, to this Court.

6. This Court also cannot ignore the fact that criminal case was registered against the accused in the year 1987 and the same was concluded in the year 2000. Accused serving as a Peon in a Law College must have faced great hardships in attending the Court being an accused of the criminal case instituted against him on a police report. It appears that maximum efforts to harass the accused must have been made by protracting litigation. Surprisingly, the State has taken the cause of a complainant who was allegedly the victim of a personal quarrel resulted into a simple injury. I agree that State was supposed to prefer appeal if the State is not satisfied with the order of acquittal as the case was instituted on the police report. However, totality of the facts reveals that this is not a case wherein the appeal should have been preferred.

7. For the reasons aforesaid, there is no substance in this appeal and the same is hereby dismissed in limine. Impugned order of acquittal is hereby confirmed.

14.02.2001 [C.K. BUCH, J]

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